

REPORT
on the Free Movement of Workers
in Greece in 2009-2010

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Introduction

With regard to EU citizens, there were no particular legislative changes during the year 2009.

The number of court cases based on EU law on the free movement of workers continues to be extremely small compared to the total number of cases relating to third country migrants. Hardly any disputes related to the free movement of workers arise in administrative or judicial procedure.

The items concerning the free movement of workers following the enlargement of the European Union continue not to be broadly discussed. The nationals of new EU member states continue to represent a small number compared to the total number of immigrants.

Transitional arrangement for access to the country of workers who are nationals of the new EU member states (Bulgaria, Romania) no longer exist.

Chapter I

The Worker: Entry, Residence, Departure and Remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Text(s) in force

Art 7 par. 1 of P.D. 106/2007, implementing art 7 (1a) of Directive 2004/38/EC, provides that all Union citizens have the right of residence on Greek territory for a period no longer than three months if they are workers or self-employed persons in Greece.

Art 7 par. 3 of P.D. 106/2007, implementing art 7 (3a-d) of Directive 2004/38/EC, provides that a Union citizen who is no longer a worker or self-employed person retains the status of worker or self-employed person if (a) he/she is temporarily unable to work as the result of an illness or accident; (b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office; (c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months; (d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

Art 8 of P.D. 106/2007, implementing art 8 of Directive 2004/38/EC, provides that for periods of residence longer than three months, Union citizens are required to register with the police authorities not later than three months from the date of arrival. A registration certificate is issued immediately, stating the name and address of the person registering and the date of the registration. For the registration certificate to be issued, it is required that the above Union citizens present a valid identity card or passport and a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons.

According to art 22 of P.D. 106/2007 implementing art 14 (4 a-b) of Directive 2004/38/EC, an expulsion measure may in no case be adopted against Union citizens or their family members if (a) the Union citizens are workers or self-employed persons, or (b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

Art 14 par. 1 of P.D. 106/2007 2007 implementing art 17 of Directive 2004/38/EC, provides that Union citizens have, exceptionally, the right of permanent residence before completion of a continuous period of five years of residence by, in the following cases: (a) they are workers or self-employed persons who, at the time they cease working in Greece, have reached the age laid down for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in Greece for at least the preceding twelve months and have resided there continuously for more than

three years; (b) they are workers or self-employed persons who have resided continuously in Greece for more than two years, provided that they cease working as a result of permanent incapacity to work, (c) they are workers or self-employed persons who, after three years of continuous employment and residence in Greece, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in Greece, to which they return, as a rule, each day or at least once per week. The above mentioned conditions as to length of residence and employment and to length of residence do not apply if the worker's or the self-employed person's spouse has Greek nationality or has lost Greek nationality by marriage to that worker or self-employed person. If the worker or self-employed person has acquired for himself the right of permanent residence in Greece, his/her family members who are residing with him/her in the Greek territory, irrespective of nationality, have the right of permanent residence as well. In the case of worker's or self-employed person's death while still working but before acquiring permanent residence status in Greece, his family members who are residing with him acquire the right of permanent residence there, on condition that:(a) the worker or self-employed person had, at the time of death, resided continuously on Greek territory for two years, or (b) the death resulted from an accident at work or an occupational disease, or (c) the surviving spouse lost Greek nationality following marriage to the worker or self-employed person.

Art. 20 par. 3 of P.D. 106/2007, implementing art 24 (2) of Directive 2004/38/EC, by way of derogation from the general principle of equality, does not confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period seeking employment and providing evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. It is not, prior to acquisition of the right of permanent residence, granted maintenance aid for studies, including vocational training consisting of student grants or student loans to persons other than workers, self-employed persons, persons who retain such status, and members of their families.

2. SITUATION OF JOBSEEKERS

Jobseekers have the right of residence on the Greek territory for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

They have the right of residence for a period of longer than three months if a) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office b) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;(c) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

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Like all other Union citizens, for periods of residence longer than three months duration, jobseekers are required to register with the police authorities not later than three months from the date of arrival.

However, there are not any other explanatory memorandum or administrative guidelines concerning the right of residence of the above persons.

Art 22 par. 4 of P.D. 106/2007 provides that, by way of derogation from general principles concerning the retention of the right of residence, an expulsion measure may in no case be adopted against Union citizens or their family members if the Union citizens entered the Greek territory in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

Chapter II

Members of the Worker's Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Art 2 par. 2 of P.D. 106/2007 provides that «Family member» means:(a) the spouse;(b) the direct descendants who are under the age of 21 or are dependants and those of the spouse;(c) the dependent direct relatives in the ascending line and those of the spouse

2. ENTRY AND RESIDENCE RIGHTS

Art 6 of P.D. 106/2007 provides that Union citizens have the right of residence on the Greek territory for a period of up to three months without any conditions or any formalities other than to hold a valid identity card or passport. The above provisions are also applied to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen. Union citizens and their family members have the right of residence as long as they do not become an unreasonable burden on the social assistance system.

Art 7 of P.D. 106/2007 provides that all Union citizens have the right of residence on Greek territory for a period of longer than three months if they are family members accompanying or joining a Union citizen who satisfies the general conditions . Union citizens and their family members shall have the right of residence provided as long as they meet the conditions set out by the law.

3. ACCESS TO WORK

The family members of a Union citizen having the right of residence are entitled, irrespective of their nationality, to work in Greece in a dependent or an independent way (art. 20 of the P.D. 106/2007). Therefore, third country nationals members of the family have access to work.

4. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

There is no difference of treatment between family members of workers and family members of jobseekers having the right of residence.

Chapter III

Access to Employment: a) Private sector and b) Public sector

A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

a.1. Equal treatment in access to employment (e.g. assistance of employment agencies).

Text(s) in force

Ministerial decision 200295/2005 provides that new places of employment are subventioned by the State in cases of unemployed persons, either of Greek or of an EU Member State nationality.

Art. 27 of law 3016/2002 provides a special allowance for long term unemployed workers. The law also provides that this special allowance is granted only to Greek citizens and to the citizens of EU member States.

Miscellaneous (administrative practices, etc.)

Offices of employment (OAED) assists citizens of EU Member States in access to employment.

a.2. Language requirements

Text(s) in force

Law 3304/2005 implemented Directives 2000/43 and 2000/78 and lays down a framework for combating discrimination on the grounds of racial or ethnic origin. A language requirement is possible that forbids indirect discrimination, as it puts persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (art. 3). A difference of treatment which is based on a characteristic related to racial or ethnic origin does not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate (art. 5).

According to our research there are no national legislative rules providing that in certain sectors of activity, there should be certain level of knowledge of the Greek language.

B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

b.1. Nationality condition for access to positions in the public sector

Text(s) in force

Approximately 35 presidential decrees (P.D.) are issued in order to specify the posts in the public sector which involve ‘direct or indirect participation in the exercise of powers conferred by public law and in the discharge of functions whose purpose is to safeguard the general interests of the state or of other public authorities and which therefore require a special relationship of allegiance to the state on the part of persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality’.

Most of them provide that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Ministry of Finance, as security guards, policemen, firemen, frontier guards, special guards, rural policemen or civil servants of the Police. But in some cases it is doubtful if the specified posts really imply the exercise of public powers or the responsibility to safeguard the interests of the State. It is provided that only persons of Greek nationality can be appointed to the Ministry of Finance as data base-network-software-hardware specialists (P.D. 8/2002) to the Ministry of Transports and Communications as counselors of the Minister, special collaborators and journalists (P.D. 74/2002), as civil servants of the Fire Brigade (P.D. 88/2002).

No developments are ascertained in second half of 2009 and in 2010

b.2. Language requirements

Art 2 (3) of Law 2431/1996 provides that the knowledge of the Greek language is necessary for employment in the public sector. The degree of knowledge of the language is defined each time by proclamation taking into account the requirements of the post of employment. As proof of the degree of knowledge of the Greek language, it often requires either a Bachelors certificate from a Greek High School or a special language certificate granted by the Center of Greek Language. Thus, other ways of proving the degree of knowledge of the language are not provided in the proclamation of the posts, e.g. the fact that the candidate has executed the same job for a long period in Greece.

In the same way, art 14 (10), art 13 (3) and art. 12 (3) of Law 1566/1985 concerning the requirements of the post of employment as a teacher of Secondary, Primary and Nursery school provide that if the candidates do not possess a Bachelors certificate from a Greek High School, a special language certificate is required. The above certificate should prove ‘the complete and fluent knowledge of Greek language’. The above language requirements concern all specialities of teachers and there is no distinction. Therefore, even professors of foreign languages are included.

According to Ministerial Decision 256/1998 candidates of Level D certificate (required for teachers) should be in a ‘position to understand - and express themselves in - oral and written language with a high degree of accuracy, to use complex expressions and perform linguistic functions within their personal and professional experiences, and to respond to

situations which are unfamiliar to them. They should be able to extract information and to understand implied statements in conversations, which may involve some unknown topics and a number of speakers talking at normal rate. In speaking, candidates should be in a position to express views efficiently, within their personal and professional experiences, with a high degree of fluency and accuracy and to participate in conversation which involve situations unknown to them. In writing candidates should be in a position to perform in a wide variety of topics related to everyday needs and aspects of personal and professional activities'.

The European Commission has formally requested Greece to amend its legislation requiring qualified EU teachers to have an excellent knowledge of the Greek language. This request has taken the form of a reasoned opinion. The Commission considers that by imposing an excellent knowledge of the Greek language on foreign teachers Greece violates Article 53 of the Directive 2005/36/EC on the recognition of professional qualifications as well as Article 39 of the Treaty guaranteeing the free movement of workers. Greece has not yet implemented Directive 2005/36/EC.

b.3. Recognition of professional experience for access to the public sector

Text(s) in force

Art 1 par. 7 of Law 2834/2000 provides a system of recruitment of teachers of primary schools and professors of high schools taking into account, among other elements, the service of the candidate. Additional points are awarded for this service, placing candidates at a higher position. The Supreme Administrative Court -Council of State (decision 196/2004) has interpreted this regulation conforming to the European community law and accepted that it shall be taken into account in the same way as the service of the candidate in another member state.

Administrative practice

The Greek State Legal Council stated (145/2007) that the service of a candidate for medical doctor in a hospital of another member state shall be taken into consideration for his recruitment into the services of the Greek Health System.

Chapter IV

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Specific issue: Working conditions in the public sector

- Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade, career perspectives)

Article 15 of Law 3205/2003 provides that the seniority in the public sector of another EU State is taken into consideration in order to determine the salary of the employee. The seniority in the private sector is not recognized.

Article 1 of Law 3204/2003 provides that the seniority of medical doctors in the public health system of another EU State is also taken into consideration in order to determine the hierarchy advancement of the medical doctors of the Greek health system.

- Taking into account of diplomas for determining working conditions (salary, grade, career perspectives etc)

Foreign diplomas are recognised for determining working conditions. A administrative procedure of recognition is however necessary.

- Equal treatment in relation to issues like civil servant status, trade union rights etc.

No differences of treatment have been ascertained

2. SOCIAL AND TAX ADVANTAGES

Specific issue: the situation of jobseekers

Social assistance and benefits to jobseekers do not depend on the residence, but on employment in Greece.

Chapter V
Other Obstacles to Free Movement

Chapter VI Specific Issues

1. FRONTIER WORKERS

Most social allowances do not depend on the residence, but on employment in Greece. Therefore, we can conclude that frontier workers are entitled to social allowances depending on employment.

The issue of frontier workers has been recently elevated in Greece. The only frontier country is Bulgaria and transitional arrangement for access to the country of Bulgarian workers had been abolished only several months before (2009). There are no specific administrative or legal schemes for frontier workers in addition to the EU rules and we are not aware of any bilateral agreement or transitional cooperation developed in order to facilitate international mobility.

The issue of frontier workers has not for the moment raised an important debate in Greece.

2. SPORTSMEN/SPORTSWOMEN

Text(s) in force

Greek regulations concerning athletes provide equal treatment of Greek and EU citizens. In the case of Football (Minist. Decision 18337/2001), both groups of persons are placed in the same category of athletes, while the aliens are placed in another category. Therefore there is no limit concerning the number of athletes-nationals of EU countries employed by Greek football companies.

However, according to Minist. Decision 526/2009 (Basketball) if a Basket Ball Company of A2 Category does not employ the maximum number of athletes provided by the law, it is entitled to hire up to the 31st of December, a Greek athlete not employed during the same period by another Company. Therefore, there exists a distinction between Greek athletes and athletes of foreign origin, even of an EU country.

In other cases (Basketball- Minist. Decision 14484/2001, Volleyball- Minist. Decision 18540/2002) Greek and EU citizens are placed in different categories, but it is provided that for both categories there is no limit concerning the number of athletes employed by Greek sports associations. However, there is another category composed only by amateur athletes of Greek origin, aged less than 18 years and having the right to participate in national sport teams. Up to four players belonging to this category have the right to be employed by a Sports Company. Therefore there exists a distinction between amateurs of Greek origin and amateurs of foreign origin, even of an EU country.

Concerning the amateurs sports associations, the ministerial decisions regulating the participation of athletes in these associations provide that citizens of EU States who reside permanently in Greece and the members of their family are entitled to be registered in the associations and to participate in the games and in every kind of championship (e.g. Gymnastics,

Handball, Swimming, Cycling, Tennis, Horse-riding). Therefore, there is no distinction between Greek and EU citizens in this field.

Most Regulations concerning the employment of coaches provide that only nationals have the right to be recruited as coaches. For the recruitment of aliens as coaches the permission of the General Secretary of Sports is necessary. However, they require that EU legislation must be respected. This is the case of Regulation Basketball (Minist. Decision 41556/1992), Volleyball (Minist. Decision 361/2006), Canoe-kayak (Minist. Decision 284/2008) and tennis (Minist. Decision 450097/2008) coaches. However, in other points some differences of treatment continue to exist. It is provided that if an alien is employed as a coach and another person is recruited as his assistant, the latter must be a Greek citizen (art 1 par. 4 Minist. Decision 41556/1992 concerning basketball coaches, art 1 par. 5 Minist. Decision 1588/1993 concerning volleyball coaches). It is also provided that if an alien is dismissed from an association, he does not have the right to be employed during the same sports session by another association (art 1 par. 5 Minist. Decision 41556/1992 concerning basketball coaches, art 1 par. 5 Minist. Decision 1588/1993 concerning volleyball coaches). There is no distinction among aliens, citizens, and non citizens of an EU State. Therefore, there is discrimination between Greek and EU citizens concerning the conditions of employment as coaches. However, these restrictions seem not to be applied in practice

The new Regulation concerning Football coaches provides (art 3 par. 1 Minist. Decision 25533/2005 concerning football coaches) that for the recruitment of aliens as coaches the permission of the General Secretary of Sports is necessary. Some special conditions are also provided for the recruitment of these persons, such as previous experience in a national team, being under 70 years of age, and the recruitment of a Greek citizen as his assistant (art 4 par. 1 Minist. Decision 25533/2005). There is no distinction among aliens, citizens, and non citizens of an EU State. Therefore, there is discrimination between Greek and EU citizens concerning the conditions of employment as football coaches. The only distinction concerns the recruitment of an alien as football coach from amateur associations and from professional football companies of B and C category. In this instance the recruitment of an alien is forbidden, but the law provides that this restriction does not affect EU citizens.

The new Regulation of Hellenic Association of Amateur Athletics (Art 7) approved by Minist. Decision 49563/2008 provides that an amateur athlete of foreign origin, even of an EU country, is not entitled to participate during the same session in competitions if he changes association.

3. THE MARITIME SECTOR

Presidential Decree 12/1993 modified Greek legislation concerning the employment of EU citizens to posts of merchant ships flying the Greek flag. These posts are open to seamen – EU citizens in the same way as concerning Greek citizens. The quality of seaman is accorded pursuant to the rules of the state of his origin. Art 2 par. 3 of Presidential Decree 12/1993 provides that wherever in Greek legislation it refers to Greek seamen this also includes nationals of EU States. Therefore, there is no field for difference of treatment between Greek and EU citizens.

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Thus, there is still an exception concerning the posts of master and his substitute (chief mate). These posts are reserved to Greek nationals (art 2). This measure is reasoned by the fact that the master of a vessel is entrusted with powers under public law.

During 2007 the Greek Government made some proposals in order to bring the national rules into conformity with Community law.

4. RESEARCHERS/ARTISTS

There is not a special legal status for researchers/artists.

5. ACCESS TO STUDY GRANTS:

Text(s) in force

Art 20 of P.D. 106/2007 provides that Greece is not be obliged to confer entitlement to social assistance during the first three months of residence, nor, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

Miscellaneous (administrative practices, etc.)

The Greek Scholarship Foundation demands the status of Greek nationality of candidates for access to the study scholarships. The Greek Ombudsman expressed in February 2008 the opinion that such a status should be abolished concerning EU citizens (workers or self-employed persons) and long term residents.

Chapter VII

Application of Transitional Measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

Transitional arrangement for access to the country of workers who are nationals of the new EU member states no longer exist

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

Transitional arrangement for access to the country of workers of Bulgaria and Romania no longer exist.

No practical problems or national case law pertaining to the functioning of transitional arrangements are identified.

Chapter VIII Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68

As far as we know, no discussion concerning the relationship between Regulation 1408/71 and Art 45 TFEU and Regulation 1612/68 has taken place.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

As far as we know, no discussion concerning the relationship between Regulation 1408/71 and Regulation 1612/68 has taken place.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

3.1. Integration measures

3.2. Immigration policies for third-country nationals and the Union preference principle

3.3. Return of nationals to new EU Member States

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The Greek Ombudsman's role is very important concerning complaints for violation of Community law on the free movement for workers. There is a particular section specialising on the rights of any type of immigrants.

5. SEMINARS, REPORTS AND ARTICLES

Seminar of Economic and Social Council of Greece 'European Migration Policy: contemporary challenges and effects on Mediterranean Member States of the EU'. Athens 9/10-2-2010 (www.oke.gr).